

## REMARKS

In response to the Examiner's election/restriction requirement, the Applicants hereby elect the claims of group I for examination, that is, claims 1-35. As indicated above, claims 36-51 have been withdrawn from the present application.

The requirement for restriction as set forth in the Office Action is respectfully traversed. The Applicants consider the invention to be defined by claims 1-51. Section 121 of the Patent Statute allows a restriction requirement in the event that two independent and distinct inventions are claimed in a single patent application. It is not seen how the two claimed groups set forth by the Examiner are independent. There is a clearly disclosed relationship between the two inventions, that is, a structure and a process for fabricating the structure. Thus, the inventions are dependent.

As to the distinctiveness between the two inventions, the Examiner sets forth two tests, i.e., that the claimed process can be used to make a materially different product or that the claimed product can be made by a materially different process. The Examiner's comments regarding forming the via by a selective etching process involving dry or wet etching and the use of a processing temperature different from that of the claimed temperature range are not deemed persuasive as to how the claimed process can be used to make a materially different product or how the claimed product can be made by a materially different process. The Examiner has set forth merely an alternative to one step in the process, which does not prove that the product can be made by a materially different process. Using a known alternative for one step in the process does not satisfy the requirements of a "materially different process."

Also, distinctiveness cannot be based on different fields of search, as the assignment of classes and sub-classes is merely an administrative tool employed by the Patent and Trademark Office to classify patent applications and facilitate searching of prior art. There is nothing in the Statute that refers to administrative convenience as a basis for a restriction requirement. The search required by Section 131 must be conducted to identify all relevant art, no matter where and how that art is classified.

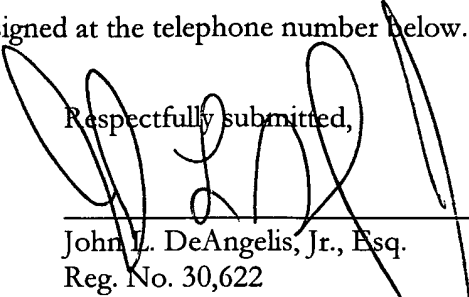
In any case, to be responsive to the Examiner's restriction requirement and to move the case along to examination and issue, the Applicants have elected group I as set forth above. The

applicants reserve the right to file a divisional application or take other action as appropriate to protect the invention set forth in the withdrawn claims.

It is respectfully requested, however, that the restriction requirement be withdrawn and that a complete examination of the application in compliance with Section 131 be performed.

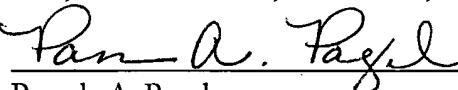
If a telephone conference will assist in clarifying or expediting this Amendment, the Examiner is invited to contact the undersigned at the telephone number below.

Respectfully submitted,

  
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that this Response to Election/Restriction Requirement is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25 day of August, 2004.

  
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Pamela A. Pagel